



PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED

05/14/21
03:03 PM

May 14, 2021

Agenda ID #19519
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 14-07-002 ET AL.:

This is the proposed decision of Commissioner Martha Guzman Aceves. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 24, 2021 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/S/ ANNE E. SIMON

Anne E. Simon
Chief Administrative Law Judge

AES:avs

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**
(Mailed 5/14/2021)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Develop a Successor to Existing Net
Energy Metering Tariffs Pursuant to
Public Utilities Code Section 2827.1, and
to Address Other Issues Related to Net
Energy Metering.

Rulemaking 14-07-002

And Related Matter.

Application 16-07-015

**DECISION DIRECTING ESTABLISHMENT OF NET ENERGY METERING
INTERCONNECTION APPLICATION PORTALS, AND PROCESS
TO PUBLICIZE AND SCRUTINIZE SOLAR PROVIDERS WHOSE
APPLICATIONS HAVE BEEN FOUND IN NON-COMPLIANCE
WITH APPLICABLE LAWS AND REGULATIONS**

Summary

This decision directs the electric investor-owned utilities to each establish a web-based search engine for regulatory agency staff to search and retrieve net energy metering interconnection application documents. This decision also authorizes Commission staff to effectuate establishment and maintenance of a public list of solar providers whose interconnection application(s) or associated project(s) have been found in non-compliance with applicable state law or

regulatory agency rules and regulations. Finally, this decision modifies the semi-annual spot audits originally required by Decision 18-09-044, by increasing the number of interconnection applications to be audited and directing the electric investor-owned utilities to manually review the interconnection applications of solar providers that are on the public list.

This proceeding is closed.

1. Background

Decision (D.) 18-09-044 adopted a number of solar consumer protections, including development of a Solar Consumer Protection Guide (Guide),¹ and directed the electric investor-owned utilities (IOUs)² to conduct semi-annual spot audits of at least 100 interconnection applications, to confirm whether a solar provider has a valid Contractors State License Board (CSLB) license and entered that number for its interconnection application, and to verify that the customer signed forms attesting that the customer received and read the Guide and CSLB Solar Energy System Disclosure Document prior to signing a contract or agreement with a solar provider. D.20-02-011 adopted further consumer protections and authorized the California Public Utilities Commission's (CPUC or Commission) Consumer Protection and Enforcement Division (CPED) to propose a citation program for the consumer protection requirements established by D.18-09-044 and D.20-02-011.

On April 27, 2020, CPED published a draft resolution to create a net energy metering (NEM) citation program for enforcing the consumer protection requirements established by D.16-01-044, D.18-09-044, and D.20-02-011; the

¹ D.18-09-044 authorized the development of a solar information packet, which is now referred to as the Solar Consumer Protection Guide.

² Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE).

proposed program included a requirement for each electric IOU to establish a solar transaction record (STR) portal, to facilitate CPUC and CSLB staff's investigation of solar complaints by enabling them to review related interconnection application details.

On May 18, 2020, the electric IOUs jointly filed a petition for modification of D.20-02-011 (petition). The electric IOUs requested that the Commission modify D.20-02-011 to "eliminate or defer any IOU citation program and instead continue exploring other options such as the registration program that remains under consideration, a secure portal for regulator access to documentation and information collected at interconnection, a taskforce to work with other enforcement agencies, increasing the frequency of spot audits, as well as others through stakeholder workshops and comments."³

On September 25, 2020, CPED staff held a workshop to provide stakeholders further opportunity to discuss the draft resolution. During the workshop, both the electric IOUs and CALSSA made presentations with suggestions for alternative ways to achieve the goals of enhanced enforcement proposed by CPED. CALSSA presented an alternative proposal that consists of the following elements:

³ *Petition for Modification of Decision 20-02-011 of Southern California Edison Company (U338E), Pacific Gas and Electric Company (U 39-E) and San Diego Gas and Electric Company (U902E)*, filed May 18, 2020, at 3.

- Contractor “watch list”: CPED or CPUC staff would maintain a watch list, consisting of contractors that have a violation of Guide requirements, or about whom CPUC or CSLB staff receive complaints warranting placement on the watch list. A contractor meeting either of these criteria would remain on the watch list for the current quarter and the following quarter. CPUC staff would refresh the watch list at the end of each quarter, removing contractors that do not have new issues;
- Targeted audits: Each IOU would conduct a semi-annual spot audit of at least 1,000 interconnection applications, half of which would be random and the other half would target contractors on the watch list;
- Increased scrutiny of contractors on watch list: In addition to targeted audits, the IOUs would:
 - Send all contracts (if fewer than ten applications) or contracts for at least ten of each contractor’s applications, to both CPUC and CSLB staff for review,
 - Conduct a visual inspection of least ten of the contractor’s applications as they are submitted. This number would increase by ten for each successive quarter that a contractor remains on the watch list; and
- Escalated cases that require visual inspection: the IOUs would inspect the following documents as they process interconnection applications, rather than in a later audit:
 - Guide and attestations,
 - Solar installation contract, including the CSLB cover sheet and supplemental information sheet(s),⁴ and
 - Electronic audit trail for electronic signatures.

⁴ CSLB staff developed a draft Solar Energy System Disclosure document with input from Commission staff. Per Assembly Bill (AB) 1070’s requirements, the cover page of the Solar Disclosure Document is intended to comply with California Business and Professions Code Section 7169(b). The CSLB will also develop supplemental information pages that include additional information, including an electric bill savings estimate pursuant to D.20-08-001.

The premise of CALSSA's proposal is that contractors would be incentivized, by the prospect that their interconnection applications would be subject to increased scrutiny and thus to a competitive disadvantage, to comply with the Commission's consumer protection requirements.

On January 5, 2021, the assigned Commissioner issued a ruling seeking party comments on CALSSA's proposal, and on a proposed STR portal as described in CPED's draft resolution.⁵

On January 22, 2021, CALSSA, the Solar Energy Industries Association (SEIA), and the electric IOUs filed comments responding to the assigned Commissioner's ruling. On January 29, 2021, CALSSA, SEIA, the electric IOUs, and the California Low-Income Consumer Coalition (CLICC) filed reply comments. We address parties' comments where and as they relate to the determinations reached regarding the implementation of a search portal and enhanced audits of NEM interconnection applications.

2. The Ious' Petition for Modification is Dismissed as Moot

The petition for modification of D.20-02-011 does not allege new or changed facts; rather, it alleges last-minute, "substantive" changes that, the IOUs assert, deprived the Commission of information that would have been helpful in realizing its consumer protection goals. We do not agree that clarifying that CPED direct its proposed citation program at the utilities is a substantive revision; moreover, parties in this proceeding had notice and opportunity to comment on the proposed citation program, and thus the Commission was not deprived of helpful information for advancing its consumer protection goals. In

⁵ The current version of Draft Resolution UEB-004 is included in Item 51 of the Commission's December 17, 2020 meeting agenda. Direct url:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M354/K033/354033086.pdf>.

any case, CPED's draft resolution implementing this proposed citation program was withdrawn, therefore the petition for modification of D.20-02-011 is dismissed as moot. Any future consideration of a NEM citation program will afford further opportunity for party comments.

3. NEM interconnection application portal

This decision directs the electric IOUs to each establish a secure (*e.g.*, password protected, using Hypertext Transfer Protocol Secure (https)) web-based search engine for regulatory agency staff to search, filter, and retrieve NEM interconnection application data and documents, regardless of status (*i.e.*, including documents for applications that have been submitted but not yet approved or otherwise disposed of). Regulatory agency staff include staff of the CPUC, CSLB and the Department of Financial Protection and Innovation (DFPI).⁶ The electric IOUs should consult with regulatory agency staff while designing their search engines to ensure the designs meet the needs of the regulatory agency staff, including enabling staff to download both custom user-created and standardized reports (*e.g.*, regularly scheduled reports of solar customer complaints) from the NEM interconnection application portals. As previously noted in D.20-02-011, providing NEM interconnection application information to regulatory agency staff is crucial to aiding staff's investigations of specific solar complaints.

In comments to the assigned Commissioner's ruling, parties noted that CPED's draft resolution included some items that are not currently part of the NEM interconnection application, and requested clarification about whether regulatory agency staff should have access to information beyond what is

⁶ On September 29, 2020 the California Department of Business Oversight changed its name to the Department of Financial Protection and Innovation.

currently included in NEM interconnection applications. This decision clarifies that the electric IOUs should enable regulatory agency staff to access documents and information submitted as part of the NEM interconnection application process. In addition, however, we see value to having the electric IOUs collect two additional items of information as part of their NEM interconnection application processes.

First, as CALSSA notes, the Home Improvement Salesperson (HIS) registration number is currently included in contracts, but is not currently required to be submitted as part of the interconnection application process. The HIS registration number is an important item of information for regulatory agency staff's investigation purposes, and staff should have ready access to this information rather than have to search through contract documents, therefore we direct the electric IOUs to collect this information as part of their NEM interconnection application processes.

Second, as CLICC suggests, in cases where a project was not financed via PACE financing, it is important to have some means to identify that entity beyond their name. Therefore, we direct the electric IOUs to collect the address (in addition to the name, as required by D.20-02-011) of any entity that finances the project through means other than PACE financing, if applicable, as part of their NEM interconnection application processes.

Regarding the cost to set up and maintain these search engines, the electric IOUs estimate one-time costs between \$112,000 and \$411,000, and SCE estimates an ongoing annual cost of \$149,000. The electric IOUs explain they would include such costs in their advice letters for setting interconnection fee amounts, consistent with direction provided by D.16-01-044.

Regarding the provision of access to personally identifiable information, the electric IOUs emphasize that any order to provide such information must comply with each agency's regulatory or enforcement purposes, and further that the Commission should, in this decision, set up a "process and procedure for protecting the information submitted to...regulatory agencies from CPRA requests." Related to this, the electric IOUs also emphasize that any order requiring the disclosure of personally identifiable information to another agency for regulatory or enforcement purposes needs to comply with each such agency's regulatory authority to obtain, collect or use such information under its own statutory enforcement jurisdiction in compliance with applicable law. This decision finds that requiring disclosure of personally identifiable information contained in NEM interconnection application documents complies with the CPUC's, CSLB's, and DFPI's regulatory authority to obtain, collect or use such information under their respective statutory enforcement jurisdiction in compliance with the California Information Practices Act and the California Constitution.

The CPUC has a memorandum of understanding with CSLB and DFPI for purposes of sharing information to pursue common regulatory and enforcement actions. This decision authorizes Commission staff to develop a process and procedure for protecting the information submitted to the CPUC, CSLB and DFPI from CPRA requests. As part of this process, Commission staff is authorized to modify the signature page of the Guide to include a signature line indicating the signer consents to having their NEM interconnection application information be disclosed to CPUC, CSLB, and DFPI staff for regulatory or enforcement purposes.

The NEM interconnection application portals required by this decision should be constructed so as to serve the purpose of enabling regulatory agency staff to associate such information directly with specific complaints.⁷ Therefore, once each electric IOU develops its NEM interconnection application portal and enables regulatory agency staff to access its portal, that IOU shall be relieved of any requirements associated with Ordering Paragraph 9 of D.20-02-011.

4. Public List of Solar Providers Whose Interconnection Applications or Associated Contracts Have Been Found in Non-Compliance With Applicable Laws Or Rules

We agree that establishing a process of increased scrutiny may deter solar providers from violating applicable consumer protection-related laws and regulations. This decision authorizes Commission staff to effectuate the establishment and maintenance of a public list of solar providers whose interconnection applications have been found in non-compliance with applicable state law or CPUC, CSLB or DFPI rules and regulations.

The list shall consist of:

1. solar providers whose NEM interconnection application(s) has/have been found by the IOUs to be in non-compliance with any of the requirements of D.18-09-044 or D.20-02-011. Placement on the list for this reason shall be supported by a document that includes the following details:
 - a. name of the IOU to which the application(s) was/were submitted;
 - b. number or other unique identifier of the application(s); and

⁷ See D.20-02-011 at Section 5.1.3 and Ordering Paragraph 9.

- c. identification of the specific requirement(s) of D.18-09-044 and/or D.20-02-011 with which the application(s) was/were found in non-compliance.
2. solar providers who have been found by CSLB to have violated the California Business and Professions Code or the California Code of Regulations, or a contract that is subject to a CSLB citation. Placement on the list for this reason shall be supported by a document that includes the following details:
 - a. name of the IOU to which the associated NEM interconnection application(s) was/were submitted
 - b. reference or other unique identifier of the contract(s)
 - c. identification of the specific requirements of applicable law with which the contract(s) was/were found in non-compliance; or identification of the specific provision(s) of a contract that was/were found in non-compliance.
3. solar providers who have been found by DFPI to have violated the California Financial Code, the California Corporations Code, or the California Code of Regulations. Placement on the list for this reason shall be supported by a document that includes the following details:
 - a. name of the IOU to which the associated NEM interconnection application(s) was/were submitted.
 - b. reference or other unique identifier of the project.
 - c. Identification of the specific requirements of applicable law with which the project(s) was/were found in non-compliance.

Commission staff is authorized to effectuate the establishment and publication of this list on a public website, with the first publication anticipated to occur before the second quarter of 2022. Concurrently with effectuating publication of the list, Commission staff is authorized to ensure each IOU, as applicable, is notified of the solar provider(s) that have been placed on the list.

The IOUs must provide notification to each such provider that they have been placed on the list. Each such notification must:

- identify the specific application(s) that were found to be non-compliant;
- for each such application, identify the specific requirements that the application did not comply with; and
- inform the provider that they may submit a request to a dedicated email address specified by the IOU, for removal from the watchlist by submitting documentation that demonstrates the identified application(s) did in fact comply with the identified requirement(s).

The IOUs must review the first 10 NEM interconnection applications, plus 10 additional NEM interconnection applications for each successive quarter that the provider has been on the public list, submitted by these providers while the providers are on the list with increased scrutiny before approving the applications, including manual review of documents submitted as part of any such application.

Commission staff are authorized to ensure the list is updated quarterly thereafter. Solar providers that have been placed on the list shall remain on the list until the end of the full quarter after which they were initially placed the list.

In comments to the assigned Commissioner's ruling, CALSSA and SEIA recommend that a solar provider whose application(s) or associated project(s) have been found in non-compliance, as described above, should not immediately be placed on the public list but instead receive a warning notice. CLICC opposes this recommendation, asserting there is no need for such warning because the only consequence of being placed on the list is that their applications will be scrutinized more carefully than the applications of providers who are not on the

list. We agree with CLICC that there is no need to provide a warning before Commission staff or their state agency delegate(s) place a provider on the list.

The electric IOUs appear to suggest that they could notify staff of an application that they found to be problematic, during the course of their spot audit, and that staff could instruct them to cease processing that application. CALSSA and SEIA oppose this suggestion because, they assert, (1) it misunderstands the process because the spot audits should be conducted after an application has been processed, and (2) if the electric IOUs meant to refer to the manual review of applications of providers that have been placed on the list, the appropriate action would be to issue a deficiency notice to the applicant. We generally agree with CALSSA and SEIA on this point, however we note that the electric IOUs may include applications that were received in the previous six months, but not yet processed, within scope of their semi-annual spot audits. Nevertheless, if the electric IOUs find deficiencies with such applications during the course of their audits, the appropriate action would be to issue a deficiency notice to the applicant.

CALSSA, SEIA and CLICC all advocate that the list should not be made public. We disagree because we see publication as an additional and necessary incentive for providers to abide by all applicable laws and regulations. However, providers should have an opportunity to request removal from the list, which we afford as described below.

4.1. Process for Reviewing Solar Providers' Requests for Removal from the List

If a solar provider submits a request for removal from an IOU's list and the provider was placed on the list due to non-compliance found by the IOU, the IOU must review the documentation of compliance submitted by the provider

and make a new determination of whether the application(s) comply with the identified requirement(s). The IOU must notify the provider and Commission staff of its determination, including the reason(s) for the determination, within 15 days of having received the request and documentation from the provider. If the IOU determines the application(s) do not comply with the requirement(s), it must ask if the provider wants a second review of the determination. If the provider assents, the IOU must forward the request to Commission staff within 5 days. If a solar provider submits a request for removal from an IOU's list and the provider was placed on the list due to non-compliance found by the CSLB or DFPI, the IOU must forward the request to the Commission staff within 5 days of having received the request and documentation from the provider.

If it is determined the application(s) do comply with the requirement(s), Commission staff is authorized to effectuate removal of the provider from the list, and re-publication of the list in advance of the next scheduled quarterly update. Commission staff will ensure the provider is notified of the new determination regarding the provider's request for removal from the list, within 45 days after they receive the provider's request.⁸ The time limits in this section may be modified by a letter from the director of Energy Division or his/her/their designee.

5. Enhanced Audits and Increased Scrutiny of Non-Compliant Solar Providers

This decision directs the electric IOUs to modify their semi-annual spot audits, first required by D.18-09-044, in the following ways.

⁸ For computation of time, Rule 1.15 of the Commission's Rules of Practice and Procedure applies to the time limits set forth in this section.

First, beginning with the semi-annual spot audits immediately following the issue date of this decision, the electric IOUs must audit, at minimum, the lesser of (1) the total number of, and (2) 384 randomly selected NEM interconnection applications received in the previous six months from solar providers not on the public list described in Section 3. This decision specifies a minimum of 384 for the purpose of achieving a 95 percent confidence level and a 5 percent margin of error, regardless of actual population size.⁹

Second, the electric IOUs must include in their semi-annual spot audits, at minimum, the lesser of (1) the total number of, and (2) 384 randomly selected, NEM interconnection applications received in the previous six months from solar providers that were on the public list described in Section 3 at the time of application submittal (unless it was determined the provider should not have been on the list).

Third, the electric IOUs must share their audit findings with CPUC, CSLB, and DFPI staff to support each agency's regulatory and enforcement actions.

6. Comments on Proposed Decision

The proposed decision of Commissioner Martha Guzman Aceves in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

⁹ See, e.g., <https://www.researchgate.net/profile/Khalid-Hassan/post/Minimum-sample-size-for-t-test/attachment/59d642fec49f478072eabba3/AS%3A273806050955286%401442291858672/download/SampleSize-web-+calculation.xls>

7. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Patrick Doherty and Valerie U. Kao are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. Providing NEM interconnection application information to regulatory agency staff is crucial to aiding staff's investigations of specific solar complaints.

2. The HIS registration number is an important item of information for regulatory agency staff's investigation purposes.

3. In cases where a project was not financed via PACE financing, it is important to have some means to identify the financing entity beyond their name.

4. Requiring disclosure of personally identifiable information contained in NEM interconnection application documents complies with the CPUC's, CSLB's, and DFPI's regulatory authority to obtain, collect or use such information under their respective statutory enforcement jurisdiction in compliance with the California Information Practices Act and the California Constitution.

5. Establishing a process of increased scrutiny, including a public list of solar providers whose interconnection applications have been found in non-compliance with applicable laws or regulations, may deter solar providers from violating applicable consumer protection-related laws and regulations.

Conclusions of Law

1. The electric IOUs should enable regulatory agency staff to access documents and information submitted as part of the NEM interconnection application process.

2. The electric IOUs should each establish a secure, web-based search engine for regulatory agency staff to search, filter, and retrieve NEM interconnection application data and documents. The electric IOUs should consult with regulatory agency staff while designing their search engines to ensure the designs meet the needs of the regulatory agency staff, including enabling staff to associate such information directly with specific complaints, and to download both custom user-created and standardized reports.

3. The electric IOUs should require HIS registration numbers as part of their NEM interconnection application processes.

4. The electric IOUs should require the address of any entity that finances the project through means other than PACE financing, if applicable, as part of their NEM interconnection application processes.

5. The Commission should establish a process of increased scrutiny, including a public list, for solar providers whose interconnection applications have been found in non-compliance with applicable state law or CPUC, CSLB or DFPI rules and regulations.

6. Solar providers should have an opportunity to request removal from the list.

7. The electric IOUs should modify their semi-annual spot audits to increase scrutiny of whether solar providers are complying with the Commission's consumer protection rules.

O R D E R

IT IS ORDERED that:

1. Within 120 days after the issue date of this decision, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) must each establish a secure, web-

based search engine for regulatory agency staff to search, filter, and retrieve net energy metering interconnection application data and documents. PG&E, SDG&E, and SCE must consult with regulatory agency staff while designing their search engines to ensure the designs meet the needs of the regulatory agency staff, as described in Section 2 of this decision. Fulfillment of this requirement will relieve PG&E, SDG&E, and SCE of any requirements associated with Ordering Paragraph 9 of Decision 20-02-011.

2. Commission staff is authorized to develop a process and procedure for protecting the information submitted to the Commission, the Contractors State License Board, and the Department of Financial Protection and Innovation consistent with the Information Practices Act. As part of this process, Commission staff is authorized to modify the signature page of the Solar Consumer Protection Guide to include a signature line indicating the signer consents to having their net energy metering interconnection application information be disclosed to Commission, Contractors State License Board, and Department of Financial Protection and Innovation staff for regulatory or enforcement purposes.

3. Commission staff is authorized to effectuate the establishment and maintenance of a public list of solar providers whose interconnection applications have been found in non-compliance with applicable law or Commission, Contractors State License Board, or Department of Financial Protection and Innovation rules and regulations, as described in Section 3 of this decision.

4. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must provide notification to solar providers who have been placed on the public list, review the net energy

metering interconnection applications of these providers, and review and dispose of solar providers' requests for removal from the public list, as described in Section 3 of this decision.

5. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must modify their semi-annual spot audits, originally required by Decision 18-09-044, as described in Section 4 of this decision.

6. Consolidated Rulemaking 14-07-002 and Application 16-07-015 are closed.

This order is effective today.

Dated _____, 2021, at San Francisco, California.